

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ERNEST B. EADY,

Petitioner,

v.

No.: 3:11-cv-191
(VARLAN/SHIRLEY)

DAVID OSBORNE, Warden,

Respondent.

MEMORANDUM AND ORDER

Petitioner has filed a successive petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's application to proceed *in forma pauperis* is **GRANTED**. The Clerk is **DIRECTED** to file this action without prepayment of costs or other fees as of the date the petition was received and to serve a copy of the petition and this Memorandum and Order on the respondent and the Attorney General of the State of Tennessee. However, for the reasons stated below, the respondent shall not be required to file an answer or other pleading to the petition and this petition is **DISMISSED**.

Petitioner was convicted of second degree murder. He previously filed a § 2254 petition attacking the same conviction, which was denied on the merits. *Ernest B. Eady v. Jack Morgan , Warden*, Civil Action No. 3:05-cv-69 (E.D. Tenn. May 9, 2006), *aff'd*, 515 F.3d 587 (6th Cir.), *cert. denied*, 129 S. Ct. 321 (2008). The claim that petitioner raises in the successive petition is the same claim that was raised in the previous § 2254 petition and therefore must be dismissed. 28 U.S.C. § 2244(b)(1) ("A claim presented in a second or

successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.").

Because it plainly appears from the face of the petition that petitioner is not entitled to any habeas corpus relief in this Court, the petition for the writ of habeas corpus is **DISMISSED**. Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts. The Clerk is **DIRECTED** to notify the petitioner of this Order and to close this file. A certificate of appealability **SHALL NOT ISSUE** in this action. 28 U.S.C. § 2253(c).

In addition to the above, this Court has carefully reviewed this case pursuant to 28 U.S.C. § 1915(a) and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court hereby **DENIES** the petitioner leave to proceed *in forma pauperis* on appeal. See Rule 24 of the Federal Rules of Appellate Procedure.

ENTER :

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE